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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Austria, Belgium, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Dominican Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Liechtenstein, Luxembourg, Mexico, Netherlands, Panama, Paraguay, Peru, Portugal, Slovenia, Spain, Sweden, Switzerland and Uruguay: draft resolution

The right to privacy in the digital age

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights[1] and relevant international human rights treaties, including the International Covenant on Civil and Political Rights[2] and the International Covenant on Economic, Social and Cultural Rights,[3]

Reaffirming further the Vienna Declaration and Programme of Action,[4]

Welcoming General Assembly resolutions 68/167 of 18 December 2013 and 69/166 of 18 December 2014, as well as Human Rights Council resolutions 28/16 of 26 March 2015 on the right to privacy in the digital age[5] and 32/13 of 1 July 2016 on the promotion, protection and enjoyment of human rights on the Internet,[6] and welcoming the appointment of the Special Rapporteur on the right to privacy,

[1] Resolution 217 A (III).
[2] See resolution 2200 A (XXI), annex.
[3] A/CONF.157/24 (Part I), chap. III.
[4] See *Official Records of the General Assembly, Seventieth Session, Supplement No. 53* (A/70/53), chap. III, sect. A.
[5] Ibid., *Seventy-first Session, Supplement No. 53* (A/71/53), chap. V, sect. A.

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Welcoming the reports of the Special Rapporteur on the right to privacy[6] and the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,[7]

Welcoming also the work of the Office of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age, noting with interest its report thereon,[8] and recalling the panel discussion on the right to privacy in the digital age held during the twenty-seventh session of the Human Rights Council,

Noting with appreciation general comment No. 16 of the Human Rights Committee on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation, while also noting the vast technological leaps that have taken place since its adoption[9] and the need to discuss the right to privacy in view of the challenges of the digital age,

Recognizing the need to further discuss and analyse, based on international human rights law, issues relating to the promotion and protection of the right to privacy in the digital age, procedural safeguards, effective domestic oversight and remedies, the impact of surveillance on the right to privacy and other human rights, as well as the need to examine the principles of non-arbitrariness and lawfulness, and the relevance of necessity and proportionality assessments in relation to surveillance practices,

Noting the increased potential of violations of the right to privacy, with effects for the dignity and reputation of individuals, in particular women and children,

Noting also the Global Multi-stakeholder Meeting on the Future of Internet Governance (NETmundial) and its principles and the ongoing multi-stakeholder engagement that is taking place within the framework of the United Nations-mandated Internet Governance Forum, and recognizing that effectively addressing the challenges relating to the right to privacy in the context of modern communications technology will require an ongoing, concerted multi-stakeholder engagement,

Affirming that this engagement will be greatly facilitated by the creation of a structured, informal dialogue on the right to privacy among all relevant stakeholders,

Noting that the rapid pace of technological development enables individuals all over the world to use new information and communications technologies and at the same time enhances the capacity of governments, companies and individuals to undertake surveillance, interception and data collection, which may violate or abuse human rights, in particular the right to privacy, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, and is therefore an issue of increasing concern,

Reaffirming the human right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such

[6] A/HRC/31/64 and A/71/368.

[7] A/HRC/32/38 and A/71/373.

[8] A/HRC/27/37.

[9] *Official Records of the General Assembly, Forty-third Session, Supplement No. 40* (A/43/40), annex VI.

interference, and recognizing that the exercise of the right to privacy is important for the realization of the right to freedom of expression and to hold opinions without interference and the right to freedom of peaceful assembly and association, and is one of the foundations of a democratic society,

Recognizing that the discussion on the right to privacy should be built upon the guarantees of the existing legal basis and should not open the path for undue interference in an individual's human rights,

Stressing the importance of full respect for the freedom to seek, receive and impart information, including the fundamental importance of access to information and democratic participation,

Recalling that the right to privacy, as well as freedom of expression and freedom of access to information, contribute to enabling the free development of an individual's personality and that digital technology has a considerable impact on the enjoyment of these rights,

Noting that, while metadata can provide benefits, certain types of metadata, when aggregated, can reveal personal information and can give an insight into an individual's behaviour, social relationships, private preferences and identity,

Expressing concern that the commodification of personal data has increased to such an extent that individuals are often not conscious of, nor do they fully consent to, the sale or multiple resale of their data, especially those considered to be sensitive, such as medical and health data,

Emphasizing that unlawful or arbitrary surveillance and/or interception of communications, as well as the unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the right to privacy, can interfere with the right to freedom of expression and may contradict the tenets of a democratic society, including when undertaken on a mass scale,

Recognizing that the same rights that people have offline must also be protected online, including the right to privacy, and that, while surveillance is not in itself a violation of human rights, any limitation to the right to privacy must adhere to the overarching principles of legality, necessity and proportionality,

Noting in particular that surveillance of digital communications must be consistent with international human rights obligations and must be conducted on the basis of a legal framework, which must be publicly accessible, clear, precise, comprehensive and non-discriminatory and that any interference with the right to privacy must not be arbitrary or unlawful, bearing in mind what is reasonable to the pursuance of legitimate aims, and recalling that States that are parties to the International Covenant on Civil and Political Rights must undertake the necessary steps to adopt laws or other measures as may be necessary to give effect to the rights recognized in the Covenant,

Emphasizing that States must respect international human rights obligations regarding the right to privacy when they intercept digital communications of individuals and/or collect personal data and when they require disclosure of personal data from third parties, including private companies,

Recognizing the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms, including in achieving the Sustainable Development Goals,

Recalling that general comment No. 16 of the Human Rights Committee recommends that States take effective measures to prevent the unlawful retention, processing and use of personal data stored by public authorities and business enterprises,

Noting that the increasing capabilities of business enterprises to collect, process and use personal data can pose a risk to the right to privacy,

Noting also the impact that certain business enterprises may have on the enjoyment of human rights, given that they may be able, through technological means or owing to a dominant position in the market, to influence or restrict the free flow of information,

Welcoming measures taken by business enterprises, on a voluntary basis, to provide transparency to their users about their policies regarding requests by State authorities for access to user data and information,

Recalling that business enterprises have a responsibility to respect human rights as set out in the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,[10] and that States must take measures to protect against human rights abuses, including of the right to privacy, within their territory or jurisdiction by third parties, including business enterprises,

Deeply concerned at the negative impact that surveillance and/or interception of communications, including extraterritorial surveillance and/or interception of communications, as well as the collection of personal data, in particular when carried out on a mass scale, may have on the exercise and enjoyment of human rights,

Noting with deep concern that, in many countries, persons and organizations engaged in promoting and defending human rights and fundamental freedoms frequently face threats and harassment and suffer insecurity as well as unlawful or arbitrary interference with their right to privacy as a result of their activities,

Noting that, while concerns about public security may justify the gathering and protection of certain sensitive information, States must ensure full compliance with their obligations under international human rights law,

Noting also in that respect that the prevention and suppression of terrorism is a public interest of great importance, while reaffirming that States must ensure that any measures taken to combat terrorism are in compliance with their obligations under international law, in particular international human rights, refugee and humanitarian law,

Recognizing that an open, secure, stable, accessible and peaceful environment in cyberspace is of paramount importance for the realization of the right to privacy in the digital age,

[10] A/HRC/17/31, annex.

1. *Reaffirms* the right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, as set out in article 12 of the Universal Declaration of Human Rights[1] and article 17 of the International Covenant on Civil and Political Rights;[2]

2. *Recognizes* the global and open nature of the Internet and the rapid advancement in information and communications technologies as a driving force in accelerating progress towards development in its various forms, including in achieving the Sustainable Development Goals;

3. *Affirms* that the same rights that people have offline must also be protected online, including the right to privacy;

4. *Strongly encourages* all States to promote the establishment, maintenance and strengthening of an open, secure, stable, accessible and peaceful environment in cyberspace based on the obligations enshrined in the Charter of the United Nations and human rights instruments;

5. *Calls upon* all States:

(a) To respect and protect the right to privacy, including in the context of digital communication;

(b) To take measures to put an end to violations of those rights and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their obligations under international human rights law;

(c) To review their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law;

(d) To establish or maintain existing independent, effective, adequately resourced and impartial judicial, administrative and/or parliamentary domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal data;

(e) To provide individuals whose right to privacy has been violated by unlawful or arbitrary surveillance with access to an effective remedy, consistent with international human rights obligations;

(f) To develop and implement adequate legislation, with effective sanctions and remedies, that protects individuals against practices that violate the right to privacy, namely through the unlawful and arbitrary collection, processing, especially by decisions based on automated processing, retention or use of personal data by individuals, business enterprises and private organizations;

(g) To empower citizens through quality education and lifelong education opportunities to foster their digital literacy and the technical skills required to effectively protect their own privacy;

(h) To respect the right to privacy by refraining from requiring business enterprises to take steps that interfere with the right to privacy in an arbitrary or unlawful way, whether through legislation, policy or other means;

(i) To consider appropriate measures that would enable business enterprises to adopt voluntary transparency measures with regard to arbitrary or unlawful requests by State authorities for access to private user data and information;

(j) To develop concrete safeguards and remedies against violations of the right to privacy, dignity and reputation on the Internet, in particular those affecting women and children;

(k) To develop legislation, safeguards and remedies against the commodification of sensitive personal data, including health and medical data;

(l) To ensure that decisions based on automated processing that significantly affect the rights of an individual are transparent and have no discriminatory impact;

6. *Calls upon* business enterprises:

(a) To fulfil their responsibility to respect human rights, as set out in the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,[8] including the right to privacy in the digital age;

(b) To inform users about the collection, use, sharing and retention of their data that may affect their right to privacy and to establish transparency policies;

(c) To work towards enabling secure communications and the protection of individual users against arbitrary or unlawful interference with their privacy;

(d) To consider a renewed emphasis on the development of technical safeguards, including encryption, overlay software and various other relevant technical solutions;

7. *Encourages* all relevant stakeholders to participate in a structured, informal dialogue on the right to privacy, and welcomes the contribution of the Special Rapporteur on the right to privacy to this process;

8. *Encourages* the Human Rights Council to remain actively seized of the debate, with the purpose of identifying and clarifying principles, standards and best practices regarding the promotion, protection and implementation of the right to privacy, and to consider an expert workshop to be the basis of an upcoming report of the Secretary-General on this matter;

9. *Decides* to continue the consideration of the question at its seventy-third session.